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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO: ALL DIRECT  
PURCHASER ACTIONS

Master File No. 3:14-cv-03264-JD

**DIRECT PURCHASER PLAINTIFFS'  
SUPPLEMENTAL BRIEF IN FURTHER  
SUPPORT OF MOTION FOR FINAL  
APPROVAL OF PROPOSED  
SETTLEMENTS WITH DEFENDANTS  
FUJITSU LIMITED, NEC TOKIN,  
NITSUKO, THE OKAYA DEFENDANTS,  
AND ROHM**

Date: March 2, 2017  
Time: 10:00 am  
Courtroom: 11, 19<sup>th</sup> Floor

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DIRECT PURCHASER PLAINTIFFS' SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF MOTION FOR FINAL  
APPROVAL OF PROPOSED SETTLEMENTS WITH DEFENDANTS FUJITSU LIMITED, NEC TOKIN, NITSUKO, THE  
OKAYA DEFENDANTS, AND ROHM

1 The Direct Purchaser Plaintiffs (“DPPs”) submit this supplemental brief in further support of  
 2 their Motion for Final Approval of the Proposed Settlements with Defendants Fujitsu Limited, NEC  
 3 TOKIN, Nitsuko, the Okaya Defendants, and ROHM (Dkt.1461, the “Final Approval Motion”).<sup>1</sup>

4 **I. THE CLASS MEMBERS’ RESPONSE TO THE SETTLEMENTS IS**  
 5 **OVERWHELMINGLY POSITIVE**

6 Interim Lead Class Counsel (“Lead Class Counsel”) for Direct Purchaser Plaintiffs (“DPPs” or  
 7 the “Class”) and Rust Consulting, Inc. (“Rust”), the claims administrator, have provided notice of the  
 8 proposed Settlements as provided by the Court’s Order Granting Plaintiffs’ Motion for Preliminary  
 9 Approval of Class Action Settlement (the “Order”) (Dkt. 1455).

10 Lead Class Counsel and Rust have provided notice by U.S. mail, by publication (including an  
 11 advertisement published in *The Wall Street Journal*), by Internet postings capturing 5,587 unique  
 12 visitors, and through a social media campaign that generated 283,880 gross impressions. *See id.* In  
 13 addition, Lead Class Counsel and the Claims Administrator have initiated or responded to hundreds of  
 14 telephone calls and emails. *See Stinehart Decl.* at ¶ 11; *Saveri Decl.* at ¶ 5. After broadly disseminating  
 15 notice of and information about the Settlements to Class members, Lead Class Counsel and Rust have  
 16 fully executed the Court-ordered notice program. *See Stinehart Decl.* at ¶ 12.

17 Out of the 2,668 potential Class members identified from Defendants’ transactional data or from  
 18 Defendants’ submissions, Class members have submitted 607 claim forms. *See Stinehart Decl.* at ¶¶ 10,  
 19 13. Not one potential Class member has objected to either the Settlements or counsel’s request for an  
 20 award of attorney’s fees and expenses. *See Stinehart Decl.* at ¶¶ 4-5; *Saveri Decl.* at ¶¶ 6-7.

21 The Settlements are an excellent result for the Class. The \$32,600,000 in Settlements comes  
 22 from five Defendants responsible for less than 2 percent of the total U.S. commerce at issue during the  
 23 relevant period. *See Dkt. 1461*, at p. 12. The settlement amounts for each of the Settlement Defendants  
 24 account for a significant portion of their respective sales to U.S. purchasers during the relevant period,  
 25 ranging from roughly 26.4% (ROHM) to 11 times the entire relevant U.S. sales (Nitsuko). *See id.* at pp. 5-  
 26 9. Further, each of the Settling Defendants has agreed to provide substantial cooperation to DPPs to  
 27 assist with their continued prosecution of their Sherman Act claims against the Non-Settling  
 28

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<sup>1</sup> Defined terms in DPPs’ Final Approval Motion are the same herein.

1 Defendants. *See id.*

2 The Class—members of which include many large, sophisticated businesses that are  
3 knowledgeable purchasers of electronic components—has largely accepted the Settlements. Class  
4 members representing 46% of the total commerce at issue have submitted claim forms. *See* Saveri Decl.  
5 at ¶ 8; Stinehart Decl. at ¶ 14. Indeed, many Class members having a large percentage of U.S. purchases  
6 during the relevant period have remained in the Class. The average claim amount<sup>2</sup> for all claim forms  
7 submitted by Class members that include pre-populated purchase history based on transactional data  
8 provided by Defendants is \$63,153.25. *See* Saveri Decl. at ¶ 11.

9 On the other hand, only twelve (12) corporate families (including parent corporations and their  
10 subsidiaries) have requested exclusion, in whole or in part, from the Settlements. *See* Stinehart Decl. at  
11 ¶ 15. Of these, one corporate family group has chosen to submit a claim form with respect to four (4) out  
12 of the five (5) settling Defendants. Another corporate family has requested exclusion with respect to all  
13 settling Defendants, but neither the parent nor any of its subsidiaries appear to have been a direct  
14 purchaser, based on the transactional data provided by Defendants. *See id.*

15 The fact that many of the largest Class members have chosen to remain in the Class and benefit  
16 from the Settlements supports counsel's request for fees and expenses. These sophisticated businesses,  
17 some of which are among the largest business concerns in the country, are sophisticated consumers of  
18 legal services. They should be considered to know well the value of the benefit achieved and the work  
19 needed to obtain it against a complex worldwide cartel, such as that involved in this case. Significantly,  
20 no Class member has expressed any concerns about counsel's award request. Rather, the opposite is  
21 true. Several Class members having among the top 200 U.S. purchases by dollar amount during the  
22 relevant period have stated that they understand the complexity of this action and the challenges  
23 counsel have faced prosecuting the Class' claims. Those Class members, each of whom chose to  
24 participate in the Settlements, expressed their appreciation to counsel for prosecuting this action and  
25 obtaining the large monetary settlements for which approval is sought here. *See* Saveri Decl. at ¶ 15.

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27 <sup>2</sup> Because the audit process is ongoing, these figures are subject to change. *See* Stinehart Decl. at ¶¶ 12-  
28 13. There is no reversion of any of the Settlement funds to the Settling Defendants, so the amount of  
claims distributed to each participating Class member may be higher. *See* Saveri Decl. at ¶ 12.

1 The Class' positive response to the Settlements is demonstrated not only by the significant  
 2 number of claims made, but also by the limited number of opt-outs and by the numerous statements of  
 3 satisfaction that Class members expressed directly to Lead Class Counsel. *See* Saveri Decl. at ¶ 3.

4 From December 18, 2016 through February 19, 2017, Rust answered 117 telephone calls from  
 5 Class members and answered nearly 500 e-mails and additional requests for information, including  
 6 requests for electronic versions of claim forms that Rust mailed pursuant to the Court's order. *See*  
 7 Stinehart Decl. at ¶ 11. During the claims period, Lead Class Counsel called, left messages, or  
 8 attempted to contact approximately 200 of the largest Class members to confirm their receipt of the  
 9 claim form and notice packets, and to answer any questions they may have had regarding the  
 10 Settlements.

## 11 **II. NOTHING UNDERMINES THE STRONG PRESUMPTION HERE IN FAVOR OF** 12 **FINAL APPROVAL**

13 The results of the claims process here support final approval of the Settlements. Many large,  
 14 sophisticated businesses that routinely retain counsel to pursue their interests through litigation have  
 15 submitted claims. Significantly, these Class members want to participate in the settlement. They do not  
 16 object to the Settlements or counsel's requests for an award of attorney's fees and expenses. *See* Saveri  
 17 Decl. at ¶¶ 6, 7, 14, 15. These Class members are some of the largest electronic components purchasers  
 18 in the United States and are understood to be sophisticated consumers of legal services.<sup>3</sup> *See id.* Their  
 19 participation in the Settlements—and their lack of objections—demonstrate that the Class approves of  
 20 the settlement. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. MDL No. 1917, 2015 U.S. Dist.  
 21 LEXIS 170525, at \*197 (N.D. Cal. Dec. 17, 2015) (citing *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d  
 22 619, 629 (E.D. Pa. 2004)); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 U.S. Dist.  
 23 LEXIS 29161, at \*15 (E.D. Pa. Sept. 27, 2004) ("The fact that there have been **no objectors** to the  
 24 Settlement, that the claims filed represent a significant majority of the sales at issue, and that claims

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25 <sup>3</sup> Representatives of many of these large Class members expressed to Lead Class Counsel that they  
 26 would prefer not to have their participation in the Settlements made known to the public and  
 27 Defendants. *See* Saveri Decl. at ¶ 14. This preference is largely based on the Class members' concerns  
 28 that such information, if made public, could disrupt or injure their business relationships with the  
 Defendants. *See id.* Lead Counsel will be prepared to discuss this issue further in camera should the  
 Court wish to do so. *See id.*

1 have been filed by major companies with significant resources . . . supports approval of the  
 2 settlement.”). *See also In re Tableware Antitrust Litig.*, No. C-04-3514 VRW, 2007 U.S. Dist. LEXIS  
 3 89998, at \*9-10 (N.D. Cal. Nov. 28, 2007) (granting final approval where class members did not object  
 4 to settlement); *Bynum v. Dist. of Columbia*, 412 F. Supp. 2d 73, 77 (D.D.C. 2006) (“The low number of  
 5 opt outs and objectors . . . supports the conclusion that the terms of the settlement were viewed  
 6 favorably by the overwhelming majority of class members.”); *Pallas v. Pac. Bell*, No. C-89-2373 DLJ,  
 7 1999 U.S. Dist. LEXIS 23880, 1999 WL 1209495, at \*8 (N.D. Cal. July 13, 1999) (“The small  
 8 percentage . . . of persons raising objections is a factor weighing in favor of approval of the settlement.”).

9 The limited number of opt-outs here also weighs in favor of final approval. *See In re Cathode Ray*  
 10 *Tube (CRT) Antitrust Litig.*, 2015 U.S. Dist. LEXIS 170525, at \*197 (low opt-out rates relative to number  
 11 of notices sent favor approval of a settlement). Only twelve (12) corporate families representing  
 12 approximately 17% of the total volume of U.S. commerce during the relevant period have requested to  
 13 be excluded from the Settlements. *See Saveri Decl.* at ¶¶ 9-10; *Stinehart Decl.* at ¶ 14.

14 The opt-outs from Flextronics, Avnet, and AASI say little about the proposed Settlement  
 15 because each one of them filed separate actions prior to DPPs’ motion for preliminary approval. Indeed,  
 16 a number of the opt-outs have told Lead Class Counsel that their decision to opt-out resulted from their  
 17 ongoing business relationships with Settling Defendants and their willingness to settle or address price-  
 18 fixing claims through their ongoing course of dealing. Their decisions to opt out does not indicate that  
 19 they believe the Settlements are inadequate or should not be approved. *See Saveri Decl.* at ¶ 13. To the  
 20 extent that the Settling Defendants have negotiated or may negotiate directly with opt-outs, exclusion  
 21 requests from those direct purchasers should not weigh against approval of the Settlements.<sup>4</sup>

22 Finally, the claims rate here weighs heavily in favor of final approval. In most cases, courts  
 23 approve settlements without any claims data because the claims program occurs after the settlement is  
 24 final. Here, the claims rate is high: Class members representing 46% of the total commerce have  
 25 submitted claim forms. *See Stinehart Decl.* at ¶ 14; *Saveri Decl.* at ¶ 8. This demonstrates that the  
 26

27 <sup>4</sup> The Settling Defendants’ submission supports the Court’s final approval of the Settlements. *See Dkt.*  
 28 1487. This document does not, however, identify the Class members with whom the Settling  
 Defendants are negotiating directly outside of the Settlements.

proposed Settlements are fair, reasonable, and adequate. *See, e.g., Moore v. Verizon Commc'n Inc.*, No. C 09-1823, 2013 U.S. Dist. LEXIS 122901, 2013 WL 4610764, at \*8 (N.D. Cal. Aug. 28, 2013) (approving settlement with a 3% claims rate).

Finally, as stated above, Lead Class Counsel has taken significant steps to encourage participation in the proposed Settlements.<sup>5</sup>

### III. CONCLUSION

The Court-ordered notice program has been successfully implemented. The Class members' overall reaction to the Settlements has been very positive. No Class member has objected. A small number of Class members have opted out. The support for the proposed Settlements is strong. The Court should therefore finally approve the Settlements.

For the foregoing reasons, as well as the reasons set forth in the Final Approval Motion, DPPs respectfully request that the Court grant final approval of the proposed Settlements with the Settling Defendants, certify the Settlement Class, and approve DPPs' proposed allocation plan.

Dated: February 21, 2017

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By: /s/ Joseph R. Saveri  
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<sup>5</sup> These efforts (*see* Stinehart Decl. at ¶¶ 3, 6-12; Saveri Decl. at ¶¶ 2, 3) go above and beyond what is required by Due Process and Rule 23. *See generally* Final Approval Motion at pp. 18-29 (Dkt. 1461).